INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Argument	6
Conclusion	8

CITATIONS

Cases:

Boyce Motor Lines v. *United States*, 342 U.S. 337	6
Nash v. *United States*, 229 U.S. 373	6
United States v. *Ragen*, 314 U.S. 513	6

Statute:

Immigration and Nationality Act of 1952:

Sec. 241(a)(5), 8 U.S.C. 1251(a)(5)	2, 6
Sec. 265, 8 U.S.C. 1305	2
Sec. 266(b), 8 U.S.C. 1306(b)	3

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 109

UNITED STATES, EX REL. AUDREY JOAN CZAPKOWSKI, PETITIONER

v.

JOHN W. HOLLAND, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE FOURTH DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 9; R. 10) is reported at 220 F. 2d 436. The opinion of the District Court (R. 2) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 24, 1955 (Pet. 11; R. 12). The petition for a writ of certiorari was filed on May 31, 1955. The jurisdiction of this Court is invoked under 28 U.S.C 1254.(1).

QUESTIONS PRESENTED

1. Whether the statute providing for deportation of an alien who fails to give notice of his address "unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful" is unconstitutionally vague in failing to fix a standard for the Attorney General's action.

2. Whether the statute was reasonably applied in this case.

STATUTE INVOLVED

Section 241(a)(5) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1251(a)(5), provides in pertinent part:

> Any alien in the United States including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * *
>
> (5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, * * *

Section 265, 8 U.S.C. 1305, provides in pertinent part:

> Every alien required to be registered under this title, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within the United States on the first day of January following the effective date of this Act, or on the

first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change.
* * *

Section 266(b), 8 U.S.C. 1306(b), provides:

Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 265 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 265, shall be taken into custody and deported in the manner provided by chapter 5 of this title, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

STATEMENT

The pertinent facts appear in the findings of fact of the District Court (R. 2-5), as follows:

Petitioner, a twenty-five year old native and citizen of Australia, entered the United States on January 6, 1951, for permanent residence as the wife of a United States citizen (R. 2). In June 1952, she was arrested under a deportation warrant, and after a hearing, was ordered deported "on the ground that she was found practicing prostitution subsequent to entry" (Pet. 4, R. 2-3).[1] On July 26, 1952, she filed an appeal from the order of deportation with the Board of Immigration Appeals, Washington, D. C. On August 5, 1952, she was placed under conditional parole (Pet. 4, R. 3). On August 23, 1952 she violated parole by leaving her place of detention (R. 3).

On September 3, 1952 the Board of Immigration Appeals held that petitioner was not deportable, on the ground that the alleged prostitution was committed under duress (R. 3). Petitioner received no notice of this order because the Board did not know her whereabouts (R. 3). On September 8, 1952, the Assistant Commissioner of the Inspections and Examinations Division of the Service filed a motion with the Board of Immigration Appeals to reconsider and withdraw its order of September 3 (R. 3). This motion was granted on January 5, 1953 (R. 3). After petitioner's apprehension on April 13, 1953, further hearings were held before a special inquiry officer, at which relator was represented by counsel (R. 3). Addi-

[1] In her petition relator asserts that "she was forced to commit diverse acts of prostitution by known abductors, under threats of bodily harm; and was imprisoned by them and held incommunicado." (Pet. 3, 4)

tional charges were lodged against petitioner at these hearings, one charging prostitution and the other that she was in the United States in violation of Section 241(a)(5) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1251(a)(5)) in that she "has failed to furnish notification of her address and other information in compliance with the provisions of Section 265 [8 U.S.C. 1305] and has not established that such failure was reasonably excusable or was not wilful." (R 3-4).

During the reopened hearings petitioner testified that she was aware that she was required to report her current address to the Attorney General during January 1953. She gave as her reason for failing to do so her fear of being taken into custody by the Immigration Service and deported for acts committed under duress and her desire to prevent persons of whom she was afraid from discovering her address. (R. 4.)

On May 25, 1953, the Special Inquiry Officer who conducted the reopened hearings filed an opinion ordering petitioner's deportation on both charges (R. 4). The Board of Immigration Appeals, on October 27, 1953, found petitioner deportable solely on the charge that she had failed to furnish notification of her address and had not established that such failure was reasonably excusable or was not willful (R. 4). On October 30, 1953, petitioner was ordered deported (R. 4).

Petitioner attacked the validity of the deportation order by a writ of habeas corpus in the United States District Court for the Eastern District of

Pennsylvania. The district court denied the writ, holding that the decision of the Board of Immigration Appeals was not arbitrary or capricious (R. 5-7). The Court of Appeals affirmed per curiam (R. 10).

ARGUMENT

Section 241(a)(5) renders an alien deportable for failure to notify the Attorney General of his address unless the alien establishes to the Attorney General's satisfaction that the failure to report was reasonably excusable or not willful. Petitioner argues (Pet. 5-7) that the exercise of discretion can be upheld in this case only if the statute is interpreted to give absolute discretion to the Attorney General, and that, if so interpreted, it is unconstitutionally vague. Neither contention is valid.

1. The standard of "reasonably excusable" is not unconstitutionally vague. It is no more indefinite as a guide to decision than the reasonable care standard, likewise basically factual, which is constantly applied by juries, in determination of negligence upon undisputed facts. Similar findings of reasonableness occur in the concepts of "reasonable doubt," "reasonable diligence" and many established concepts employing the word reasonable. Cf. *Boyce Motor Lines* v. *United States*, 342 U.S. 337; *United States* v. *Ragen*, 314 U.S. 513, 522-524; *Nash* v. *United States*, 229 U.S. 373, 376-378. In this case there is even less basis for attack on the standard of reasonableness than in the cases cited since the standard is not used to

proscribe conduct, but as a guide to the Attorney General in granting relief from the effects of failure to perform prescribed conduct.

2. The standard was not unreasonably applied in this case. Petitioner, who violated her parole, admitted her deliberate failure to report and stated that one of the reasons for her action was that she did not want to be retaken for completion of the deportation proceedings. She was not justified in taking the law into her own hands because she was not certain that her defense of duress would be believed. The whole purpose of the statute would be negated if fear of discovery by immigration officials was a valid excuse for failure to report. Petitioner argues (Pet. 6) that the Attorney General has interpreted the statute arbitrarily in ruling that fear of apprehension by immigration authorities is not a reasonable excuse but that ignorance of the law may be. Clearly a distinction between deliberate and non-deliberate action cannot be deemed arbitrary.

Nor is there basis to attack on habeas corpus the determination that petitioner's second reason, that is, fear of bodily harm from those who had previously abducted her, was not in this case a sufficient reason to excuse her failure to report her address. Discretion to exercise a judgment on the credibility, as well as the sufficiency, of the excuse is vested in the Attorney General. The burden is on the petitioner to show an abuse of that discretion. The courts below correctly found that petitioner had not sustained that burden.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE, 1955

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